

§ 1469.2

7 CFR Ch. XIV (1-1-05 Edition)

Guam, the Virgin Islands of the United States, American Samoa, and the Commonwealth of the Northern Mariana Islands.

(c) Through the CSP the Commodity Credit Corporation (CCC), by and through the NRCS, provides financial assistance and technical assistance to participants for the conservation, protection, and improvement of soil, water, and other related resources, and for any similar conservation purpose as determined by the Secretary.

§ 1469.2 Administration.

(a) The regulations in this part will be administered under the general supervision and direction of the Chief, Natural Resources Conservation Service (NRCS), who is a Vice President of the CCC.

(b) The Chief may modify or waive a provision of this part if the Chief determines that the application of such provision to a particular limited situation is inappropriate and inconsistent with the goals of the program.

(c) The Chief determines fund availability to provide financial and technical assistance to participants according to the purpose and projected cost of contracts in a fiscal year. The Chief allocates the funds available to carry out CSP to the NRCS State Conservationist. Contract obligations will not exceed the funding available to the Agency.

(d) The State Conservationist may obtain advice from the State Technical Committee and local workgroups on the development of State program technical policies, payment related matters, outreach efforts, and other program issues.

(e) NRCS may enter into agreements with Federal agencies, State and local agencies, conservation districts, Tribes, private entities, and individuals to assist NRCS with educational efforts, outreach efforts, and program implementation assistance.

(f) For lands under the jurisdiction of a Tribe or Tribal Nation, certain items identified in paragraph (d) of this section may be determined by the Tribe or Tribal Nation and the NRCS Chief.

§ 1469.3 Definitions.

The following definitions apply to this part and all documents issued in accordance with this part, unless specified otherwise:

Activity means an action other than a conservation practice that is included as a part of a conservation stewardship contract; such as a measure, incremental movement on a conservation index or scale, or an on-farm demonstration, pilot, or assessment.

Agricultural land means cropland, rangeland, pastureland, hayland, private non-industrial forest land if it is an incidental part of the agricultural operation, and other land on which food, fiber, and other agricultural products are produced. Areas used for strip-cropping or alley-cropping and silvopasture practices will be included as agricultural land.

Agricultural operation means all agricultural land and other lands determined by the Chief, whether contiguous or noncontiguous, under the control of the participant and constituting a cohesive management unit, that is operated with equipment, labor, accounting system, and management that is substantially separate from any other. The minimum size of an agricultural operation is a field.

Applicant means a producer as defined in this rule who has requested in writing to participate in CSP.

Beginning farmer or rancher means an individual or entity who:

(1) Has not operated a farm or ranch, or who has operated a farm or ranch for not more than 10 consecutive years, as defined in (7 U.S.C. 1991(a)). This requirement applies to all members of an entity; and

(2) Will materially and substantially participate in the operation of the farm or ranch.

(i) In the case of a contract with an individual, solely, or with the immediate family, material and substantial participation requires that the individual provide substantial day-to-day labor and management of the farm or ranch, consistent with the practices in the county or State where the farm is located.

(ii) In the case of a contract with an entity, all members must materially

and substantially participate in the operation of the farm or ranch. Material and substantial participation requires that each of the members provide some amount of the management, or labor and management necessary for day-to-day activities, such that if each of the members did not provide these inputs, operation of the farm or ranch would be seriously impaired.

Benchmark condition inventory means the documentation of the resource condition or situation pursuant to § 1469.7(a) that NRCS uses to measure an applicant's existing level of conservation activities in order to determine program eligibility, to design a conservation stewardship contract, and to measure the change in resource conditions resulting from conservation treatment.

Certified Conservation Planner means an individual certified by NRCS who possesses the necessary skills, training, and experience to implement the NRCS nine-step planning process to meet client objectives in solving natural resource problems. The certified conservation planner has demonstrated skill in assisting producers to identify resource problems, to express the client's objectives, to propose feasible solutions to resource problems, and assists the producers select and implement an effective alternative that treats resource concerns and consistent with client's objectives.

Chief means the Chief of NRCS, USDA or designee.

Conservation district means any district or unit of State or local government formed under State, territorial, or tribal law for the express purpose of developing and carrying out a local soil and water conservation program. Such a district or unit of government may be referred to as a "conservation district," "soil conservation district," "soil and water conservation district," "resource conservation district," "land conservation committee," or similar name.

Conservation practice means a specified treatment, such as a structural or land management practice, that is planned and applied according to NRCS standards and specifications.

Conservation Reserve Program (CRP) means the Commodity Credit Corpora-

tion program administered by the Farm Service Agency pursuant to 16 U.S.C. 3831-3836.

Conservation stewardship contract means a legal document that specifies the rights and obligations of any participant who has been accepted to receive assistance through participation in CSP.

Conservation stewardship plan means the conservation planning document that builds on the inventory of the benchmark condition documenting the conservation practices currently being applied; those practices needing to be maintained; and those practices, treatments, or activities to be supported under the provisions of the conservation stewardship contract.

Conservation system means a combination of conservation practices, measures and treatments for the treatment of soil, water, air, plant, or animal resource concerns.

Conservation treatment means any and all conservation practices, measures, and works of improvement that have the purpose of alleviating resource concerns, solving or reducing the severity of natural resource use problems, or taking advantage of resource opportunities.

Considered to be planted means a long term rotation of alfalfa or multi-year grasses and legumes; summer fallow; typically cropped wet areas, such as rice fields, rotated to wildlife habitat; or crops planted to provide an adequate seedbed for re-seeding.

Cropland means a land cover/use category that includes areas used for the production of adapted crops for harvest, including but not limited to land in row crops or close-grown crops, forage crops that are in a rotation with row or close-grown crops, permanent hayland, horticultural cropland, orchards, and vineyards.

Designated conservationist means an NRCS employee whom the State Conservationist has designated as responsible for administration of CSP in a specific area.

Enhancement payment means CSP payments available to all tiers as described in § 1469.23(d).

Enrollment categories means a classification system used to sort out applications for payment. The enrollment

category mechanism will create distinct classes for funding defined by resource concerns, levels of treatment, and willingness to achieve additional environmental performance.

Existing practice component of CSP payments means the component of a CSP payment as described in § 1469.23(b).

Field means a part of an agricultural operation which is separated from the balance of the agricultural operation by permanent boundaries, such as fences, permanent waterways, woodlands, and crop lines in cases where farming practices make it probable that such cropline is not subject to change, or other similar features.

Field Office Technical Guide (FOTG) means the official local NRCS source of resource information and the interpretations of guidelines, criteria, and standards for planning and applying conservation treatments and conservation management systems. It contains detailed information on the conservation of soil, water, air, plant, and animal resources applicable to the local area for which it is prepared. Guides can be reviewed at the local USDA Service Center or online at <http://www.nrcs.usda.gov/technical/efotg/>.

Forage and animal balance means that the total amount of available grazing forage and the addition of any roughage supply (hay, silage, or green chop) is balanced with the amount consumed by the total number of livestock and wildlife to meet their daily consumption needs.

Forest land means a land cover/use category that is at least 10 percent stocked by single-stemmed woody species of any size that will be at least 4 meters (13 feet) tall at maturity. Also included is land bearing evidence of natural regeneration of tree cover (cut over forest or abandoned farmland) that is not currently developed for non-forest use. Ten percent stocked, when viewed from a vertical direction, equates to an aerial canopy cover of leaves and branches of 25 percent or greater. The minimum area for classification as forest land is 1 acre, and the area must be at least 100 feet wide.

Incidental forest land means forested land that includes all nonlinear forested riparian areas (*i.e.*, bottomland

forests), and small associated woodlots located within the bounds of working agricultural land or small adjacent areas and that are managed to maximize wildlife habitat values and are within the NRCS FOTG standards for a wildlife practice. However, silvopasture that meets NRCS practice standard will be considered as pasture or range land and not incidental forestland since silvopasture is one type of intense grazing system. Areas of incidental forest land that are not part of a linear conservation practice are limited individually in size to 10 acres or less and limited to 10 percent in congregate of the total offered acres.

Indian tribe means any Indian Tribe, band, Nation, or other organized group or community, including any Alaska Native village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. 1601 *et seq.*) that is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

Indian trust lands means real property in which:

(1) The United States holds title as trustee for an Indian or Tribal beneficiary; or

(2) An Indian or Tribal beneficiary holds title and the United States maintains a trust relationship.

Joint operation means a general partnership, joint venture, or other similar business arrangement as defined in 7 CFR 718.2.

Land cover/use means a term that includes categories of land cover and categories of land use. Land cover is the vegetation or other kind of material that covers the land surface. Land use is the purpose of human activity on the land; it is usually, but not always, related to land cover. The National Resources Inventory uses the term land cover/use to identify categories that account for all the surface area of the United States.

Land management practice means conservation practices that primarily use site-specific management techniques and methods to conserve, protect from degradation, or improve soil, water, air, or related natural resources in the

most cost-effective manner. Land management practices include, but are not limited to, nutrient management, manure management, integrated pest management, integrated crop management, resource conserving crop rotations, irrigation water management, tillage or residue management, stripcropping, contour farming, grazing management, and wildlife habitat management.

Limited resource producer means a producer:

(1) With direct or indirect gross farm sales not more than \$100,000 in each of the previous two years (to be increased starting in FY 2004 to adjust for inflation using Prices Paid by Farmer Index as compiled by National Agricultural Statistical Service (NASS)); and

(2) Who has a total household income at or below the national poverty level for a family of four, or less than 50 percent of county median household income in each of the previous 2 years (to be determined annually using Commerce Department Data).

Liquidated damages means a sum of money stipulated in the CSP contract which the participant agrees to pay NRCS if the participant fails to adequately complete the contract. The sum represents an estimate of the anticipated or actual harm caused by the failure, and reflects the difficulties of proof of loss and the inconvenience or non-feasibility of otherwise obtaining an adequate remedy.

Local work group means representatives of local offices of FSA, the Cooperative State Research, Education, and Extension Service, the conservation district, and other Federal, State, and local government agencies, including Tribes, with expertise in natural resources who advise NRCS on decisions related to implementation of USDA conservation programs.

Maintenance means work performed by the participant to keep the applied conservation practice functioning for the intended purpose during its life span. Maintenance includes work to prevent deterioration of the practice, repairing damage, or replacement of the practice to its original condition if one or more components fail.

Management intensity means the degree and scope of practices or measures

taken by a producer which are beyond the quality criteria for a given resource concern or beyond the minimum requirements of a management practice, and which may qualify as additional effort necessary to receive an enhancement payment.

Measure means one or more specific actions that is not a conservation practice, but has the effect of alleviating problems or improving the treatment of the resources.

Minimum level of treatment means the specific conservation treatment NRCS requires that addresses a resource concern to a level that meets or exceeds the quality criteria according to NRCS technical guides or the minimum tier requirements to address resource concerns as defined in 1469.5(e).

Nationally significant resource concerns means the significant resource concerns identified by NRCS in this rule and in the sign-up notice as basic program eligibility requirements.

New practice payment means the payment as described in 1469.23(c).

Operator means an individual, entity, or joint operation who is in general control of the farming operations on the farm at the time of application.

Participant means a producer who is accepted into CSP and has signed a CSP contract.

Pastured cropland means a land cover/use category that includes areas used for the production of pasture in grass-based livestock production systems that could support adapted crops for harvest, including but not limited to land in row crops or close-grown crops, and forage crops that are in a rotation with row or close-grown crops. Pastured cropland will receive the same stewardship payment as cropland.

Pastureland means a land cover/use category of land managed primarily for the production of introduced forage plants for grazing animals and includes improved pasture. Pastureland cover may consist of a single species in a pure stand, a grass mixture, or a grass-legume mixture. Management usually consists of cultural treatments: fertilization, weed control, reseeding or renovation, and control of grazing.

Practice life span means the time period in which the conservation practices are to be used and maintained for

their intended purposes as defined by NRCS technical references.

Priority resource concern means nationally significant resource concerns and local resource concerns, approved by the Chief, for which enhancement payments will be available.

Producer means an owner, operator, landlord, tenant, or sharecropper who shares in the risk of producing any crop or livestock; and is entitled to share in the crop or livestock available for marketing from a farm (or would have shared had the crop or livestock been produced).

Quality criteria means the minimally acceptable level of treatment as defined in the technical guide of NRCS, required to achieve a resource management system for identified resource considerations for a particular land use.

Rangeland means a land cover/use category on which the climax or potential plant cover is composed principally of native grasses, grasslike plants, forbs, or shrubs suitable for grazing and browsing, and introduced forage species that are managed like rangeland. This term would include areas where introduced hardy and persistent grasses, such as crested wheatgrass, are planted and such practices as deferred grazing, burning, chaining, and rotational grazing are used, with little or no chemicals or fertilizer being applied. Grasslands, savannas, prairie, many wetlands, some deserts, and tundra are considered to be rangeland. Certain communities of low forbs and shrubs, such as mesquite, chaparral, mountain shrub, and pinyon-juniper, are also included as rangeland.

Resource concern means the condition of natural resources that may be sensitive to change by natural forces or human activity. Resource concerns include the resource considerations listed in Section III of the FOTG, such as soil erosion, soil condition, soil deposition, water quality, water quantity, animal habitat, air quality, air condition, plant suitability, plant condition, plant management, and animal habitat and management.

Resource-conserving crop rotation means a crop rotation that reduces erosion, maintains or improves soil fer-

tility and tilth, interrupts pest cycles, or conserves soil moisture and water and that includes at least one resource-conserving crop, such as a perennial grass, a legume grown for use as forage, seed for planting, or green manure, a legume-grass mixture, a small grain grown in combination with a grass or legume, whether inter-seeded or planted in rotation.

Resource management system means a system of conservation practices and management relating to land or water use that is designed to prevent resource degradation and permit sustained use of land, water, and other natural resources, as defined in accordance with the technical guide of the Natural Resources Conservation Service.

Secretary means the Secretary of the U.S. Department of Agriculture.

Sharecropper means an individual who performs work in connection with the production of the crop under the supervision of the operator and who receives a share of such crop in return for the provision of such labor.

Sign-up notice means the public notification document that NRCS provides to describe the particular requirements for a specific CSP sign-up.

Significant resource concerns means the list of resource concerns, identified by NRCS, associated with an agricultural operation that is subject to applicable requirements under CSP, such as the additional Tier II contract requirement.

Soil quality means resource concerns and/or opportunities related to depletion of soil organic matter content through soil disturbance or by sheet, rill, and wind erosion, and the physical condition of the soil relative to ease of tillage, fitness as a seedbed, the impedance to seedling emergence or root penetration, salinity, and overall soil productivity.

State Conservationist means the NRCS employee authorized to direct and supervise NRCS activities within a specified State, the Pacific Basin, or the Caribbean Area.

State Technical Committee means a committee established by the Secretary in a State pursuant to 16 U.S.C. 3861.

Stewardship payment means the CSP base payment component of the payment as described in 1469.23(a).

Structural practice means a land-based conservation practice, including vegetative practices, that involves establishing, constructing, or installing a site-specific measure to conserve, protect from degradation, or improve soil, water, air, or related natural resources in the most cost-effective manner. Examples include, but are not limited to, terraces, grassed waterways, tailwater pits, livestock water developments, contour grass strips, filterstrips, critical area plantings, tree planting, wildlife habitat, and capping of abandoned wells.

Technical assistance means the activities as defined in 7 CFR part 1466.

Technical Service Provider means an individual, private-sector entity, or public agency certified or approved by NRCS to provide technical services through NRCS or directly to program participants, as defined in 7 CFR part 652.

Tenant means one who rents land from another in consideration of the payment of a specified amount of cash or amount of a commodity; or one (other than a sharecropper) who rents land in consideration of the payment of a share of the crops or proceeds therefrom.

Tier means one of the three levels of participation in CSP.

Water quality means resource concerns or opportunities, including concerns such as excessive nutrients, pesticides, sediment, contaminants, pathogens and turbidity in surface waters, and excessive nutrients and pesticides in ground waters, and any other concerns identified by state water quality agencies.

Watershed or regional resource conservation plan means a plan developed for a watershed or other geographical area defined by the stakeholders. The plan addresses identified resource problems, contains alternative solutions that meet the stakeholder objectives for each resource, and addresses applicable laws and regulations as defined in the NRCS National Planning Procedures Handbook.

Wetlands Reserve Program (WRP) means the Commodity Credit Corpora-

tion program administered by the Natural Resources Conservation Service pursuant to 16 U.S.C. 3837-3837f.

§ 1469.4 Significant resource concerns.

(a) Soil quality and water quality are nationally significant resource concerns for all land uses.

(b) For each sign-up, the Chief may determine additional nationally significant resource concerns for all land uses. Such significant resource concerns will reflect pressing conservation needs and emphasize off-site environmental benefits. In addition, the Chief may approve other priority resource concerns for which enhancement payments will be offered for specific locations and land uses.

§ 1469.5 Eligibility requirements.

(a) In general—To be eligible to participate in CSP:

(1) Applicants must meet the requirements for eligible applicants, including any additional eligibility criteria and contract requirements that may be included in a CSP sign-up notice pursuant to § 1469.6(c);

(2) Land must meet the definition of eligible land; and

(3) The application must meet the conservation standards established pursuant to this section.

(b) Applicants may submit only one application for each sign-up. Producers who have an active CSP contract are not eligible to submit another application.

(c) Eligible applicants. To be eligible to participate, an applicant must—

(1) Be in compliance with the highly erodible land and wetland conservation provisions found in 7 CFR part 12;

(2) Have control of the land for the life of the proposed contract period.

(i) The Chief may make an exception for land allotted by the Bureau of Indian Affairs (BIA), tribal land, or other instances in which the Chief determines that there is sufficient assurance of control; and

(ii) If the applicant is a tenant, the applicant must provide NRCS with the written evidence or assurance of control from the landowner.

(3) Share in risk of producing any crop or livestock and be entitled to share in the crop or livestock available